Nangia Andersen LLP

Tax & Regulatory Newsletter

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What's Inside?

Direct Tax

Payment for benchmarking fees not FIS

Issue - FIS

Outcome - In favour of the Assessee

Background

In a recent directive, the Mumbai Tribunal explained that payment made for benchmarking services are not 'fees for included services' (FIS) under Indo-US tax treaty since make available clause is not satisfied. Accordingly, it is business profit but not liable to tax in India due to absence of PE and business connection in India

Brief Facts and Contentions

- Assessee filed an application u/s 195(1) seeking authorisation for payment to Phillip Townsend Associates Inc (PTAI) for benchmarking services like site personnel index (SPI) study, web-based training, conducting workshops etc for their petrochemical sites and stated that TDS shall be nil rate as PTAI was tax resident of USA having no PE in India. Further, assessee claimed that there was no technical element or fee for technical services (FTS) involved in such benchmarking services and thus was in nature of business income for PTAI.

- On perusal of the work order agreement, AO deduced that conditions contained in Article 12(4)(b) of Indo-US tax treaty 'make available of technical service' are satisfied. Thus, AO held that payment to PTAI would be FIS.

- On appeal preferred by assessee, CIT(A) observed that PTAI is not a subject domain expert in the area the assessee operates. Further, it has only collected information from the assessee and benchmarked it against the data collected from various other entities engaged in similar business. Thus, PTAI has not provided any know how/ knowledge but has only prompted the assessee to further take corrective action in various areas of its operations.

ITAT's Judgement

- On perusal of the agreement as well as nature of services rendered by the non-resident PTAI, the Tribunal found that payment is purely towards benchmarking of the services and such benchmarking study merely enables the clients to undertake action to improve its qualitative capacity of personnel.

- Hence, the Tribunal held that PTAI does not provide any know how or technical knowledge. Accordingly, payment made by the assessee to PTAI towards benchmarking services constitute business profit which are not liable to tax in India and neither it has any business connection in India.

Nangia Andersen LLP's Take

The fact that the provision of the service may require technical input by the person providing the service does not per se mean that technical knowledge, skills, etc. are made available to the person Similarly, the use of a product, which embodies technology, shall not per se be considered to make the technology available.

Thus, the services rendered by PTAI are neither ancillary nor subsidiary to the application or enjoyment of any right, property, or information and therefore, same are not covered under Article 12(4)(a) of Indo-US tax treaty.

[Source: ITA No.5688/Mum/2019]

Receipt from sub-licensing technology, taxable as royalty

Issue - Royalty

Outcome - In favour of the Revenue

Background

In a recent pronouncement, the Tribunal held that receipts from sub-licensing of technology to be revenue in nature, thus, taxable as business income and not long term capital gains as contended by the assessee.

Brief Facts and Contentions

- Assessee company engaged in manufacturing business, sale of diesel fuel injection equipment and parts obtained technology and sub-licensed such technology to a Malaysian company. Assessee submitted that sub-licensing of technology constitutes a capital asset, and resultant lumpsum payment received amounts to long term capital gains.

- However, assessing officer (AO) noted that transfer of all or any rights including grant of a licence can result in receipt of royalty. Thus, implying that payment received against transfer of rights need not be essentially capital gain. It can be royalty.

- Therefore, AO concluded that such payment received from sub- licensing of technology were in nature of royalty and thus, taxable as business income. Further, the decision of AO was confirmed by CIT(A) on the basis that there was no "transfer" of a capital asset.

- However, assessee preferred an appeal with the Tribunal and emphasized on Section 9(1)(vi) contending that sums which are chargeable under the head capital gains are excluded from the definition of Royalty.

ITAT's Judgement

- On perusal of License and Technology Transfer Agreement, the tribunal observed that nomenclature of the agreement and claim made by assessee are contrary to the fact that only right to use was granted with restriction to use within the licensed territory, only for manufacture of contract products. Further, the agreement makes it clear that there is only rendering of continuous support, imparting of training, make available of knowledge and no transfer.

- The Tribunal noted that the assessee does not have the product patent for the products produced by the Malaysian Company to give right to manufacture. It only owns the technical knowhow. Further, the Malaysian company has right to manufacture product on its own and it only obtained right to use the technical knowhow from the assessee. Thus, what was transferred was right to use technical know-how and not the right to manufacture as claimed by assessee.

- Additionally, the Tribunal observed that assessee had never capitalised expenditure related to technical knowhow, hasn't recognised it as capital asset in its books of account and never claimed depreciation on it.

- Further, the Tribunal opined that mere reason the assessee charged the payment on lump sum basis from the Malaysian company, payment from sub licensing of technology cannot be claimed as capital gain.

- It was also noted that assessee neither disposed the asset nor parted away the asset. The assessee also had not created any interest therein. The right to use cannot be termed as creation of interest. Hence, it cannot be said that the assessee had created interest as far as the lump sum payment and not in case of annual payment.

- Accordingly, Tribunal held that receipts from sub-licensing of technology to be revenue in nature, thus, taxable as royalty.

Nangia Andersen LLP's Take

The nature of payment cannot be a determining factor to decide the nature of receipt. It is only the nature of transaction, which can be a determining factor. Thus, payment received from sub-licensing of technology, whether received in lumpsum or in multiple payments, shall be revenue in nature and not capital asset.

[Source: IT(TP)A No.1581/Bang/2014]

Service Fee paid for client-introduction regular business expenditure, not FTS

Issue - Fee for technical service

Outcome - In favour of the assessee

Background

In recent judicial pronouncement, Delhi Tribunal held that service fee paid to a foreign entity for introduction of client to be in the nature of business payment to an intermediary and not fees for technical services (FTS). Resultantly, such service fee is not liable to withholding tax.

Brief Facts and Contentions

- The Assessee company paid an amount for facilitating sale of agricultural goods by way of introduction to an Indian company client and claimed such expenditure under the head Consultancy fee in Profit and Loss Account, on which no TDS was deducted at the time of making payment.

- Further, assessment proceedings were initiated by Assessing Officer (AO). Assessee submitted that the expenditure incurred was a normal business payment covered within the scope of Article 7 read with Article 5 of India UK tax treaty and foreign entity did not provide any 'managerial service'. Thus, the services provided were akin to advisory services provided by the foreign entity.

- However, AO did not accept the contention of assessee and resultantly, addition was made under section 40(a)(ia) of the Income Tax Act, treating the same in the nature of FTS.

- Assessee preferred an appeal with CIT(A), who noted that that consultancy fees paid to foreign entity were for services utilized for the purpose of business carried in India and the amount of consultancy fees should be deemed to accrue or arisen in India.

- Further, CIT(A) observed that services provided by the foreign entity in the form of referring client to the appellant would amount to rendering market and sales promotion

services which are covered in the bracket of managerial and consultancy services and the same, therefore, would fall in the definition of FTS. Thus, confirmed the disallowance made by the AO.

- However, assessee preferred an appeal before the Tribunal contending that Service fee paid by assessee to foreign entity as a percentage of goods sold is in the nature of 'commission on sale of goods' and cannot be treated as FTS

ITAT's Judgement

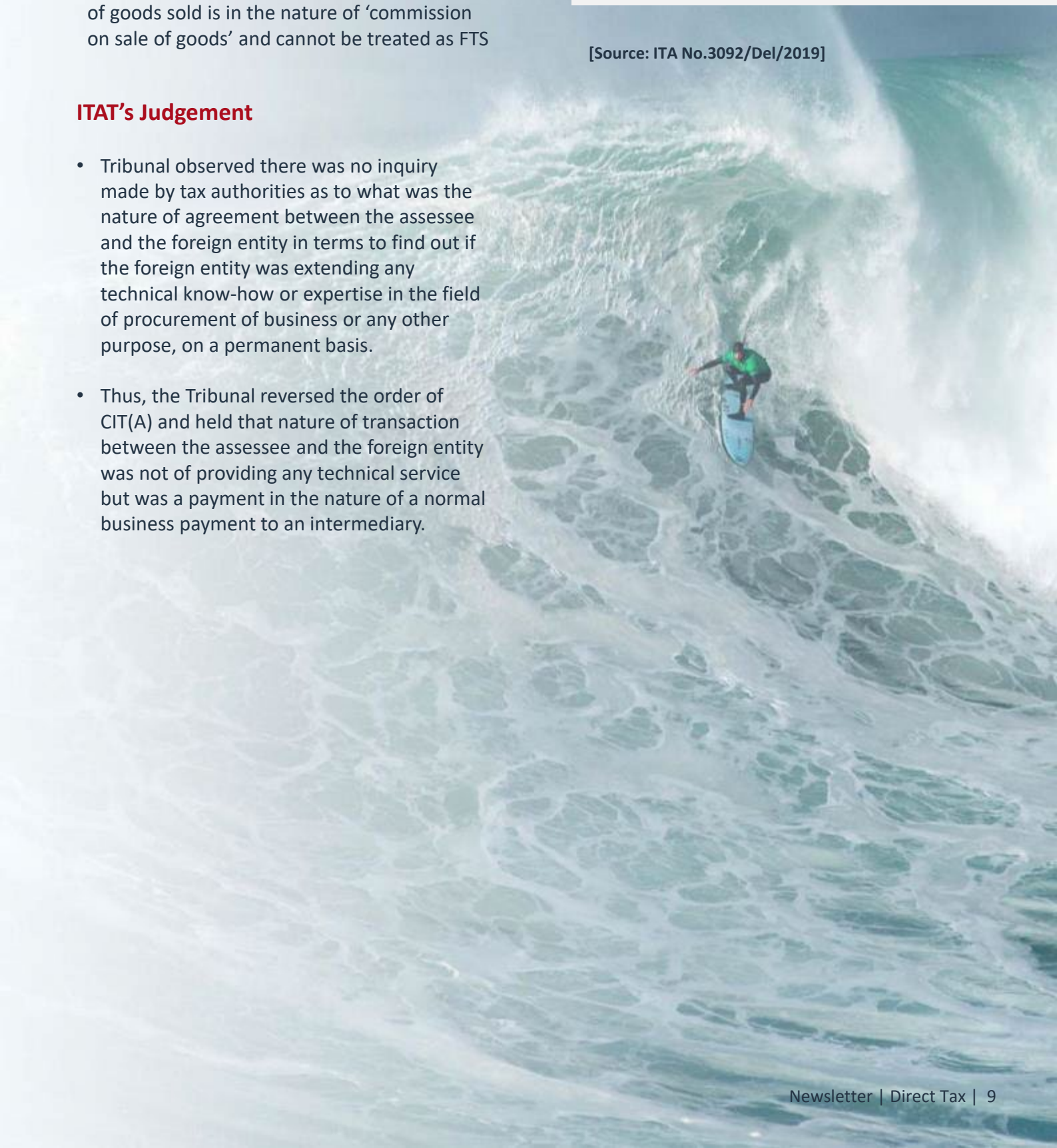
- Tribunal observed there was no inquiry made by tax authorities as to what was the nature of agreement between the assessee and the foreign entity in terms to find out if the foreign entity was extending any technical know-how or expertise in the field of procurement of business or any other purpose, on a permanent basis.

- Thus, the Tribunal reversed the order of CIT(A) and held that nature of transaction between the assessee and the foreign entity was not of providing any technical service but was a payment in the nature of a normal business payment to an intermediary.

Nangia Andersen LLP's Take

The nature of transaction between the Assessee and the foreign entity ought to be observed to identify whether the foreign entity is extending any technical know-how or expertise.

[Source: ITA No.3092/Del/2019]



Indirect Tax

ITC blocking merely basis undergoing investigation lacks 'reason to believe'. Speaking order should be self-sustainable.

Issue - Blocking of ITC lying in electronic credit ledger (ECL) by Revenue under Rule 86A of CGST and merely by recording reasons that investigation is undergoing regarding ITC fraud.

Outcome - In favour of the assessee

Facts

- The petitioner, a Public Limited Company, registered under GST legislation, was engaged in manufacturing of copper wire rod and submersible winding wire.
- The petitioner's electronic credit ledger was blocked under Rule 86A on the basis that one of the petitioner's suppliers was found to be non-existent.
- The petitioner had filed objections against the blocking, however, the same remained unanswered. Consequently, the petitioner filed a writ petition before the High Court seeking relief. The High Court gave directions to the Revenue authorities to decide on the objections within a week. The petitioners detailed submissions seeking the unblocking of his electronic credit ledger were rejected by the revenue, thus leading to a second writ petition to the High Court.

Assessee's contentions

- the order for blocking the electronic credit ledger was passed on the basis that one supplier was found to be non-existent, resulting in a proposal to cancel his registration. However, the proposal to cancel/ suspend the supplier's registration was revoked subsequently.
- Given that the very basis of the proceeding against the petitioner stood withdrawn by the respondents themselves then in such a situation there was no reason to block the electronic credit ledger of the petitioner and, thus, the impugned order deserves to be set aside.
- the intent and purport of Rule 86A is to secure interest of revenue and it is sort of preventive measure. The petitioner is a running manufacturing unit having turn-over running into multiple Crores, thus there is no possibility of fly by night. The interest of revenue is always secured.
- The mis-appropriation or fraud, if any has been committed by suppliers of the petitioner for which petitioner cannot be deprived from his valuable right of ITC. The denial of ITC is violative of Article 19(1)(g) and Article 21 of the Constitution of India.

Revenue's arguments

- Though the proceedings against the errant supplier were dropped initially, the proceedings were initiated a second time, consequent to which the suppliers GST registration was cancelled.
- In the affidavit filed before the High Court the revenue authorities cited an Intelligence report received from the CIU, Gujarat as the basis of the investigation against the petitioner and the blocking of credit under Rule 86A.

High Court's judgement

- The power under Rule 86A of the CGST Rules is exercised where the prescribed officer has reason to believe that credit of input tax available in the Electronic Credit Ledger has been fraudulently availed or the assessee is ineligible. The exercise vested in the prescribed Authority is subject to a satisfaction recorded by the said Authority and forming opinion to

the effect that the Credit Ledger has been fraudulently availed or the assessee is ineligible in the situations as prescribed under the Rule itself. In this regard, reliance was placed on the ruling of the Hon. Gujarat High Court in the case of M/s New Nalbandh Traders vs. State of Gujarat and 2 others' (R/Special Civil Application No.17202 of 2021 dated 23-02-2022

- Merely by recording that some investigation is going-on a drastic far-reaching action under Rule 86A of the CGST Rules cannot be sustained. There is no reason recorded by the Authority for exercising power under Rule 86A of the CGST Act, 2017 which would show independent application of mind that can constitute reasons to believe which is sine qua non for exercising power under Rule 86A of the CGST Rules.

- It is trite law that a speaking order must be self-sustainable and respondents at this stage cannot be allowed to justify the same by adding reasons to it by filing additional affidavits. From the reading of the order, it is evident that it is bereft of any material or 'reason to believe' that the petitioner is guilty of fraudulent transaction or is ineligible under Section 16 of the CGST Act.

Nangia Andersen LLP's Take

Time and again the High Courts have opined that the power under Rule 86A for blocking credit must be exercised judiciously only after independent application of mind and that this is sine qua non. The Gujarat High Court in S. S. Industries Vs Union of India R/Special Civil Application No. 8841 of 2020 dated 24-12-2020 and the Allahabad High Court in North End Food Marketing Pvt Ltd Vs State of U P and 4 Others 2021-TIOL-1769-HC-ALL-GST have delivered a similar opinion.

Besides the above, several petitions challenging vires of the power block the electronic credit ledger under Rule 86A are pending before various High Courts, notable amongst them is the matter of Surat Mercantile Association Vs Union of India (Gujarat High Court- R/Special Civil Application No. 15329 of 2020). Another point to consider is clause (ba) which was inserted prospectively under Section 16(2) of the CGST Act vide the Finance Act 2022. While the effective date of this amendment is yet to be notified, the million-dollar question is, whether the Courts strike down Rule 86A as ultra vires on the basis that prior to the prospective insertion of clause (ba) under Section 16(2) the CBIC did not have any powers to prescribe Rule 86A for blocking of electronic credit ledger.

Source: Rajnandini Metal Ltd. vs. UOI & Ors. [TS-307-HC(P&H)-2022-GST]

GST registration-cancellation affecting assessee's livelihood violates Art. 21 of Constitution.

An Assistant Commissioner of State tax acts under the aegis and control of the Commissioner, and act independently to the duties assigned to him by the Commissioner is not an Adjudicating Officer for the purposes of Section 107

Issue

- Whether that for want of GST Registration, the assessee is being denied his right to livelihood which is "violative of Article 21 of the Constitution as right to livelihood springs from the right to life?
- Whether high prerogative writs belong to the absolute discretion of the High Court, and even in cases where alternative and efficacious remedy is available, then also in appropriate cases the High Court can exercise its jurisdiction?
- Whether a writ petition is maintainable when the limitation provided for filing an appeal is not extendable?
- Whether a notice given on the website is sufficient notice and whether a personal notice must be given before cancellation of registration?
- Whether the Assistant Commissioner of GST, whose order is challenged in this case, is an adjudicating authority for the purposes of Section 107, or not?

Outcome: In favour of the assessee

Facts and contentions

- The petitioner / appellant is working as a mason / painting professional. He had applied for GST and was allot ted GST registration.
- The petitioner/ appellant failed to file his return for a continuous period of six months, which was mandatory under the Uttarakhand Act resulting in the cancellation of his registration.
- He preferred an appeal before the First Appellate Authority, but the same was dismissed on the ground of delay. His writ before the High Court was dismissed as non-maintainable.

Appellant's contention

- High prerogative writs belong to the absolute discretion of the High Court, and even in cases where alternative and efficacious remedy is available, then also in appropriate cases the High Court can exercise its jurisdiction.

High Court - Division bench's ruling

- Supreme Court in the case of Whirlpool Corporation Vs Registrar of Trade Marks, (1998) 8 SCC 1 has held that even if there is an alternative, efficacious remedy, a writ petition can be entertained, if the writ petition filed by the petitioner is for enforcement of fundamental rights; when the vires of an Act is challenged; where there has been a violation of principles of natural justice; and where the order or the proceedings are wholly without jurisdiction.

- it is apparent that the Statute does not provide any prohibit ion against exercise of the writ jurisdiction under Article 226 of the Constitution by the High Court. The practice of not entertaining the writ petition, except in the cases accepted above by the Hon'ble High Court, in a case where an alternative and efficacious remedy is available, is an internal mechanism, which the Court has imposed upon themselves.

- The notice for cancellation of GST registration was given on the website, which in our considered opinion, is not sufficient, and a personal notice must be given before cancellation of the registration. Therefore, the Court can invoke its jurisdiction under Article 226 of the Constitution and hold that the orders passed by the learned Commissioner can be interfered in a writ jurisdiction.

- The law made by the Parliament as well as the Legislature regarding the appeals is very strict, insofar as, that it does not provide an unlimited jurisdiction on the First Appellate Authority to extend the limitation beyond one month after the expiry of the prescribed limitation. In such case, the petitioner/ appellant is put to hardship and is left without remedy.

- if the petitioner is denied a GST registration number, it affects his chances of getting employment or executing works. Such denial of registration of GST number, therefore, affects his right to livelihood. If he is denied his right to livelihood because his GST Registration number has been cancelled, and that he has no remedy to appeal, then it shall be violative of Article 21 of the Constitution as right to livelihood springs from the right to life as enshrined in Article 21 of the Constitution of India. I n this case, if we allow the situation so prevailing to continue, then it will amount to violation of Article 21 of the Constitution, and right to life of a citizen of this country.

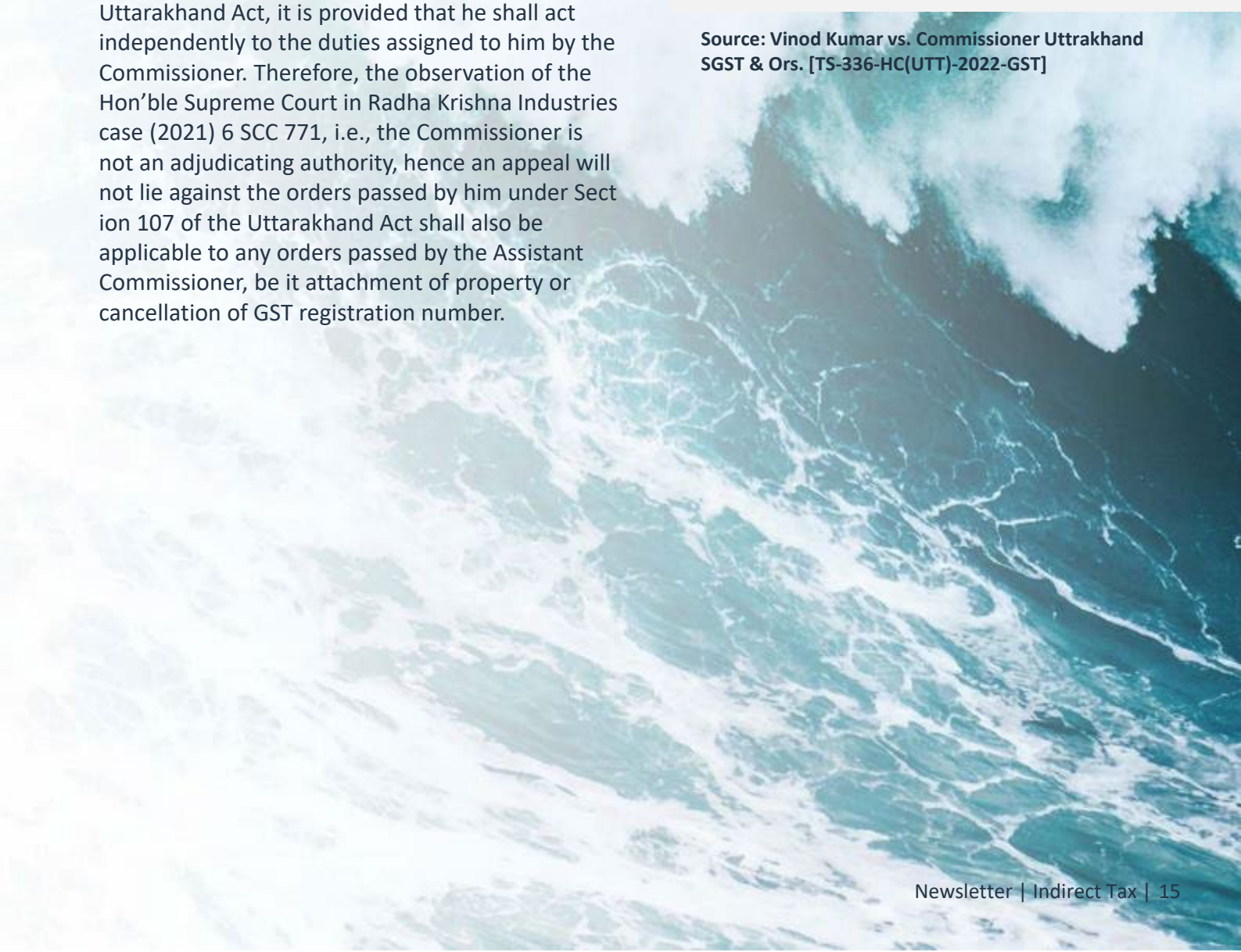
- Section 2(4) of the H.P. Act provides that 'adjudicating authority' means any authority, appointed, or authorised to pass any order or decision under this Act, but does not include the Commissioner. the office of the Assistant Commissioner acts under the aegis and control of the Commissioner, and nowhere in the Uttarakhand Act, it is provided that he shall act independently to the duties assigned to him by the Commissioner. Therefore, the observation of the Hon'ble Supreme Court in Radha Krishna Industries case (2021) 6 SCC 771, i.e., the Commissioner is not an adjudicating authority, hence an appeal will not lie against the orders passed by him under Sect ion 107 of the Uttarakhand Act shall also be applicable to any orders passed by the Assistant Commissioner, be it attachment of property or cancellation of GST registration number.

Nangia Andersen LLP's Take

Maintainability of writ petitions under Article 226 filed before the High Court, even if an alternative remedy is available, the writ must be evaluated on the fundamental aspects such as: for the purpose of enforcement of fundamental rights; when the vires of an Act is challenged; where there has been a violation of principles of natural justice; and where the order or the proceedings are wholly without jurisdiction.

The opinion of the Court that all matters related to provisional attachment or cancellation of registration are not appealable and writ under Article 226 is the only remedy, will saddle the taxpayer with costly and unwarranted litigation considering the manner and rate at which registrations are being cancelled / provisional attachment orders are being issued.

Source: Vinod Kumar vs. Commissioner Uttrakhand SGST & Ors. [TS-336-HC(UTT)-2022-GST]



Transfer Pricing

ITAT: Holds commercial bank-guarantee distinct from corporate guarantee & directs re-computation of commission rate

Outcome - In favor of both, partially

Category - Adjustment towards corporate guarantee

Facts of the Case

- GMR Infrastructure Limited ("the taxpayer") is engaged in the business of Infrastructure development in the field of Airports, Coal mining, Power projects abroad for which the taxpayer has set AEs abroad to facilitate in its expanding Infrastructure activities overseas. The case was under assessment for AYs 2010-11 to AY 2013-14, wherein the taxpayer gave a guarantee to the bank of the Associated Enterprise ("AE") that in case of a default by the AE, the loan taken by the AE would be repaid by the assessee.

- The Ld. TPO made an adjustment of the entire commission amount charged by the bank to taxpayer towards corporate guarantee extended considering 50% of differential rate of annualized average yield on 5 years bonds.

- Aggrieved by the order of the TPO, the taxpayer filed an appeal before CIT(A) wherein the CIT(A) granted relief to the extent of commission recovered by the taxpayer from its AE.

- Aggrieved by the order of CIT(A), the revenue was in appeal before the Tribunal. In this regard, taxpayer has filed cross objections on the issues raised by revenue that:

  - Corporate Guarantee is not an international transactions and the same is in nature of shareholder's activity in which no costs are involved;

  - Blanket rates cannot be adopted to benchmark the transaction of corporate guarantee

  - No commission could be charged on corporate guarantee given for the purpose of furtherance of business of Assessee overseas;

ITAT's Ruling

Following observations were drawn by ITAT :

- ITAT placed reliance on Kolkota ITAT's decision in Instrumentarium Corporation and rejected the taxpayer's argument that corporate guarantee is not an international transaction and opined that there is no dispute that the transaction under consideration falls withing the ambit of Section 92(1) of the Income Tax Act.

- ITAT observed that when a commercial bank issues bank guarantees which being a part of their business activity, in the event of any default, a higher commission is charged. In the present case, it is taxpayer that is issuing Corporate Guarantee to the effect that if the foreign AE does not repay the loan availed by it, then in such event, the taxpayer would repay the loan.

- ITAT held that the considerations which applied for issuance of a corporate guarantee are distinct and separate from that of bank guarantee and based thereon rejected the commission charged by the TPO by stating that the comparison has not been drawn between like transactions.

- Further ITAT clarified that the issue as to whether LIBOR is to be taken as the basis for interest benchmarking for foreign currency denominate loans or whether Indian PLR will be relevant for the same, is in no longer res integra. In this regard, ITAT placed reliance on the ruling of Hon'ble Bombay HC in Tata Autocomp Systems, Hon'ble Delhi HC in Cotton Naturals (I)(P) Ltd and coordinate bench of ITAT in Xchanging Solutions Ltd: ITAT Bang and in view of the same, directed TPO to recompute guarantee commission rate in the present facts.

Nangia Andersen LLP's Take

The issue of corporate guarantee is one of the most contentious and ambiguous issues in the battleground of TP litigation. There have been Rulings in the past upholding both views i.e. on one side, the Tribunal dealt with the cases, wherein the transaction related to corporate guarantee has been considered outside the ambit of international transaction, while on the other side, the same has been considered as an international transaction and benchmarked accordingly.

The instant Ruling supports the position that corporate guarantee falls under the ambit of international transaction u/s 92B of the Act and accordingly, the commission rate is to be benchmarked from arm's length perspective.

Further, this ruling has clearly deciphered between bank guarantee and corporate guarantee as in case of bank guarantee, a commercial bank issues bank guarantees being a part of its business activity and on the other hand Corporate guarantee is a guarantee provided by a corporation taking responsibility for the debt repayment of the borrower, and it does not involve any cost to the shareholders. Accordingly, commission rate for bank guarantee cannot be applied to the corporate guarantee.

Source: GMR Infrastructure Limited [TS-344-ITAT-2022(Bang)-TP]

Regulatory

Updates under the Ministry of corporate affairs ('MCA')

Amendment in Companies (Compromises, Arrangements and Amalgamations) Rules, 2016

In line with the requirement of Government approval under Foreign Exchange Management (Non-Debt Instruments) Rules, 2019, MCA through its notification dated 30 May 2022 has notified Companies (Compromises, Arrangements and Amalgamations) Rules, 2022. A declaration in Form No. CAA-16 shall be required in case of compromise or an arrangement or merger or demerger between an Indian company and a company or body corporate which has been incorporated in a country which shares land borders with India.

Amendment in Companies (Appointment and Qualification of Directors) Rules, 2014.

The MCA *vide* notification dated 1 June 2022 has notified Companies (Appointment and Qualification of Directors) Rules, 2022 to amend Rule 8, Rule 10 and annexes. The amendment seeks to add a declaration in Form DIR-2 (Consent to act as Director) and Form DIR-3 (Application for allotment of DIN) with respect to requirement of security clearance from the Ministry of Home Affairs, Government of India, in case the person seeking appointment or person applying for DIN is a national of a country which shares land border with India.

Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2022.

MCA *vide* notification dated 9 June 2022 inserted sub-rule to Rule 4 in Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2022. It states that where the Registrar, on examining the application filed in STK-2, may seek further information or seek to remove defects (if any) and ask the applicant to re-submit the complete application within 15 days. In case the applicant fails to re-submit the application within the prescribed time, the form will be treated invalid.

If the Registrar finds the application incomplete or defective even after the re-submission, s/he shall give further 15 days' time to remove the defects and complete the Form. Also, MCA introduced the amended Form No. STK-1 (Notice by Registrar for removal of name of a company from the register of Companies), Form No. STK-5 (Public notice) and Form No. STK-5A (Public notice).

Amendment in Companies (Appointment and Qualification of Directors) Rules, 2014.

The MCA *vide* notification no. G.S.R. 439(E) dated 10 June 2022 notified the Companies (Appointment and Qualification of Directors) Second Amendment Rules, 2022 which provides an opportunity to individuals whose name is removed from the databank to restore their names upon payment of fees of Rs. 1,000, subject to certain conditions. The names so restored shall be shown in a separate category for one year within which the individuals will be required to pass the online proficiency self-assessment test. Thereafter his/ her name shall be included in the databank. Further, in case the individual fails to pass the test within a period of one year, his/ her name shall be removed from the databank and a fresh application would have to be filed.

Amendment in National Financial Reporting Authority Rules, 2018 ('NFRA')

MCA *vide* notification dated 17 June 2022 has amended Rule 13 of NFRA Rules, 2018 wherein the punishment for contravention of any of the provisions of these Rules will no longer be governed by Section 450 of Companies Act, 2013 (Punishment where no specific penalty is provided) which was INR 10,000 fixed and 1,000 per day in case of continuing default.

As per the amendment, whoever contravenes any of the provisions of these rules, shall be punishable with fine not exceeding INR 5,000, and where the contravention is a continuing one, with a further fine not exceeding INR 500 for every day after the first during which the contravention continues.

National corporate social responsibility ('CSR') exchange portal

On 7 June 7 2022, Union Minister of Finance and Corporate Affairs, Nirmala Sitharaman launched National CSR Exchange Portal (https://csrxchange.gov.in/). National CSR Exchange Portal is an initiative by MCA to connect corporates, beneficiaries and Implementing Agencies. CSR Exchange Portal will help in building a more robust system for implementation of CSR projects by corporates. Further, only registered corporates (registered with MCA and having valid CIN) and Registered Implementing Agencies (registered on MCA and having valid CSR Registration Number) can register on the portal.

The portal shall also serve as an e-marketplace where Implementing Agencies can put up their ongoing projects and companies can select projects for CSR spending as per their preferences and *vice-versa*. Non-Government Agencies ('NGOs') scouting for funds will also be able to register themselves on the portal if their projects fit in the domain of CSR. It is pertinent to note that the portal shall host only pan-India social welfare projects.

Updates under PLI schemes

Guidelines on Production Linked Incentive ('PLI') Scheme for Millet Based Products

On 23 June, 2022, the Ministry of Food Processing Industries ('MoFPI') issued guidelines for Production Linked Incentives Scheme for Food Processing Industry for Millet Based Products ('PLISFPIMBP' or 'the Scheme'). The main highlights of the aforesaid guidelines are as follows:

- Applicant eligible under the scheme shall be:

  - Proprietary Firm or Partnership Firm or
  - Limited Liability Partnership ('LLP') or
  - Company registered in India or
  - Co-operatives or
  - MSME

Eligible Products

S. No.	Product Category	Millet Based Products Covered
1.	Breakfast Cereals & Bars	Muesli & breakfast cereals, puffs, flakes granola, breakfast protein bars
2.	Bakery Products	Millet cookies, Cakes, Rusks
3.	Snacks/RTC & RTE	Noodles, Pasta, chips & crisps, Bread, Papad, Khakhra, Ice creams, extruded snacks, sweet & savory snacks
4.	Mixes	Dosa, Idli, upma, Pongal & khichdi, Chakli mixes, soup
5.	RTD Beverages	Millet based Instant Drink Mix (Powdered/liquid)

Incentives

Financial Year	Millet content more than 15% by weight/volume
2022-23	10%
2023-24	10%
2024-25	10%
2025-26	9%
2026-27	8%

- The tenure of the Scheme is five years from Financial Year 2022-23 to Financial Year 2026-27.

- Base Year for calculation of Sales, Incremental Sales and Incentive payable would be Financial Year 2020-21 for first 3 years and for the 4th and 5th year, the base year would shift to FY 2022-23 & FY 2023-24, respectively.

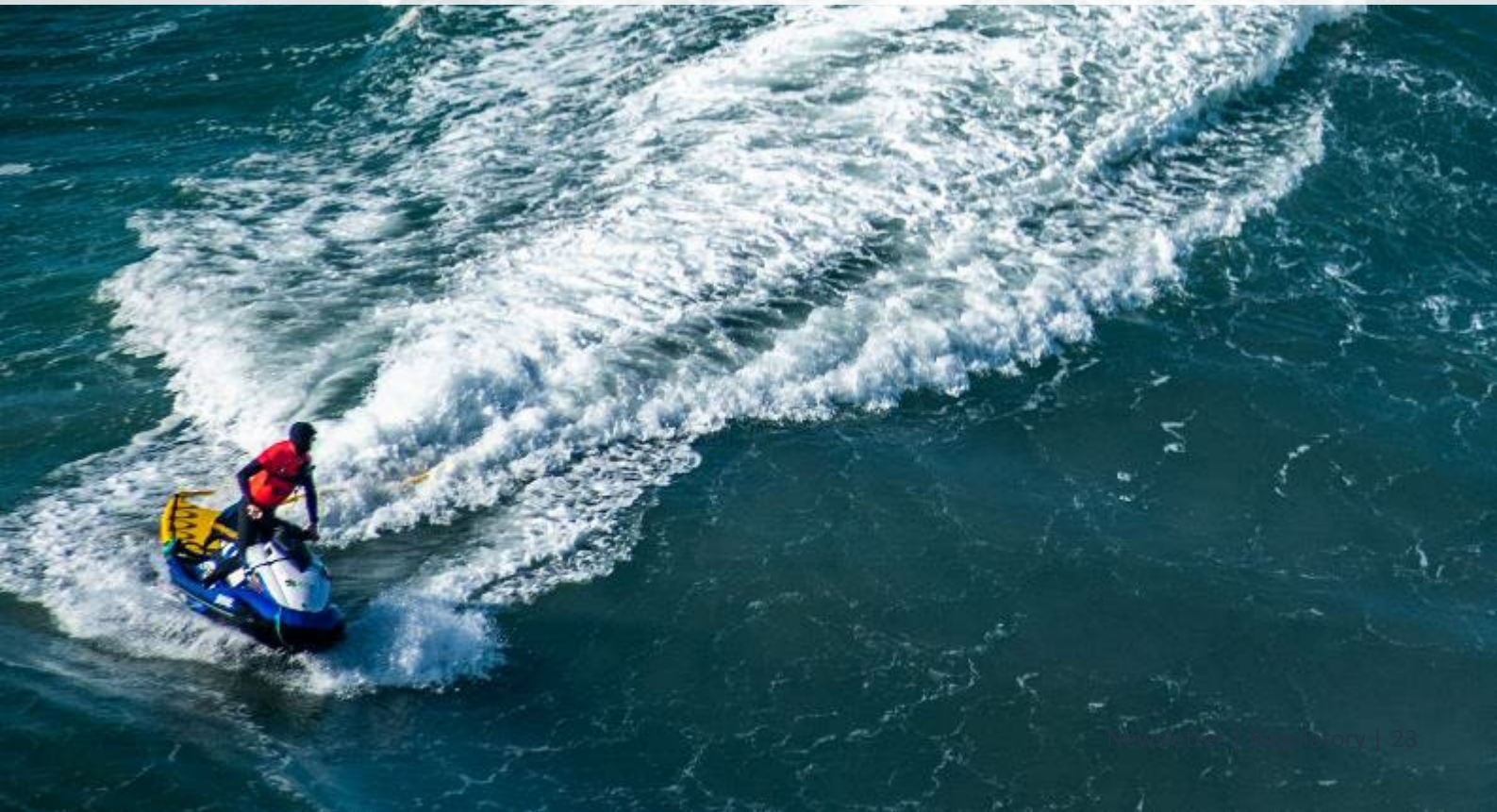
- The Incentive payable for a particular year will be due for payment in the following year. The Incentive payable for Financial Year 2026-27 will be due for payment in year 2027-28.

- Applicant shall be required to achieve minimum CAGR of 10% on sales of the eligible products from the base year for grant of incentive. In case the applicant is not able to achieve the prescribed minimum growth in sales for a particular year, no incentive will be payable for that year. However, if the industry faces lower growth due to Force Majeure, the Empowered Group of Secretaries i.e., a group committed constituted by the Department for Promotion of Industry and Internal Trade to monitor the implementation of the Scheme and undertake periodic review of the outgo to ensure that the expenditure is within the prescribed outlay, may review the prescribed minimum growth rate.

- The number of selected Applicants in each "Category of Applicants" shall be limited to the allocated outlay i.e., INR 500 crore for incentives to Large Entity and INR 300 crore for MSME during the tenure of the scheme. Further, no "Large Entity" selected for eligible products would get an incentive, more than INR 100 crore of the allocated outlay and no "MSME Applicant" would get more than INR 40 crore of the allocated outlay during the tenure of the scheme.

- The maximum incentive payable to an applicant shall be fixed in advance at the time of approval of that beneficiary.

- The Scheme will be implemented through a Project Management Agency ('PMA') which will be responsible for providing secretarial, managerial and implementation support and carrying out other responsibilities as assigned by Ministry of Food Processing Industries from time to time. IFCI Limited has been appointed as the PMA for this PLI Scheme.



Amendments in Guidelines for Production Linked Incentive ('PLI') Scheme for promoting Telecom and Networking products Manufacturing in India

On 24th February, 2021 Department of Communications, Ministry of Communications, had notified the PLI Scheme for promoting Telecom and Networking products Manufacturing in India. The Union Budget 2022-23 proposed to launch a Scheme for design-led manufacturing as part of the existing PLI Scheme with the objective to build a strong ecosystem for 5G. After consultations with various stakeholders, the Guidelines for the PLI Scheme for Telecom & Networking Products have been amended to introduce the Design-led Manufacturing with additional incentive rates.

The main highlights of the aforesaid amendments are as follows:

- The tenure of the PLI scheme for telecom and networking has been extended from the existing five years (i.e., FY 2021-22 to 2025-26) to 6 years (i.e., FY 2021-22 to 2026-27). Companies approved under the PLI Scheme shall be allowed to choose a period of 5 consecutive years from the following to achieve the Net Incremental Sales for the incentive claim.
    - FY 2021-22 to 2025-26
    - FY 2022-23 to 2026-27

Existing PLI beneficiaries who will be opting for 5-year block starting from FY 2022-23 shall have to forego their investment made during FY 2021-22.

- The baseline for Eligible investment shall be 31st March, 2021 or 31st March, 2022, as the case may be.
- Maximum financial allocation over 5 years for MSME category has been enhanced from INR 1,000 crores to INR 2,500 crores.
- Additional products have been added in the list of eligible products. These include: Millimetre Radio, E/V-Band Radios, Satellite Gateway (Hub/ Earth Station) Equipment, Free Space Optics Comm., Telecom Antenna, Open-RAN, Internet Set-Top Box, Satellite CPEs, VSAT Equipment, NG-PON-ONT, Telecom modules of IOT/ M2M Access Devices.
- Additional incentive of 1% over the applicable rate of incentive will be provided for products qualified under design led manufacturing.
- The Application Window for the PLI scheme shall open from 21st June 2022 till 20th July 2022.
    - The Department of Telecommunication reserves the right to withdraw the approval if an applicant fails to make eligible investment within the first two years.

Updates under securities and exchange board of India ('SEBI')

Extension of facility for conducting annual meeting and other meetings of unitholders of REITs and InvITs through Video Conferencing ('VC') or through Other Audio-Visual means ('OVAM')

SEBI *vide* circular dated 3 June 2022 extended the facility to conduct annual meetings of unitholders in terms of Regulation 22(3) of SEBI (REIT) Regulations, 2014 and Regulation 22(3)(a) of SEBI (InvIT) Regulations, 2014 and meetings other than annual meeting, through VC or OAVM till 31 December 2022.

Amendment in time period to apply for arbitration under Investor Grievance Redressal Mechanism

SEBI vide circular dated 3 June 2022 amended the time period for filing arbitration wherein the complainant/member is not satisfied with the recommendation of Investor Grievance Redressal Committee ('IGRC'). The complainant/member shall avail the arbitration mechanism of the Stock Exchange for settlement of complaints within three months from the date of IGRC recommendation. Earlier the time limit for availing arbitration was 6 months from the date of IGRC recommendation.

Updates under food safety and standards authority in India ('FSSAI')

Extension of last date for online submission of Annual Returns for the FY 2021-22

As per Clause No. 2.1.13 of FSS (Licensing and Registration of Food Businesses) Regulations, 2011, every licensed Manufacturer and Importer must submit annual return by 31 May every year.

FSSAI *vide* order dated 2 June 2022 extended the last date for online submission of annual returns till 30 June, 2022. It further stated that submission of annual returns physically or through e-mail will not be considered.

Compliance with respect to provisions for 'Display of Information for food service establishments' under FSS (Labelling and Display) Regulations, 2020 for E-Commerce Food Business Operators

FSSAI *vide* order dated 14 June, 2022 has drawn the reference to the provisions for **'Display of Information in Food Service Establishments'** as per FSS (Labelling and Display) Regulations, 2020 which will be effective from 1 July, 2022.

As per sub-regulation 9 of these regulations, 'Food Service Establishments having Central license or outlets at 10 or more locations shall mention the calorific value (in kcal per serving and serving size) against the food items displayed on the menu cards or boards or booklets and shall also provide information as specified under regulation 5(3) such as Nutritional Information, Allergen Information, Ingredient Information and specific requirements prescribed under the provisions 1.1 (1), (2), (3), 1.4 (3), (4) and 1.7 of schedule-II of the aforesaid regulations wherever applicable.'

Further, the regulations also stipulate that, "**E-commerce Food Business Operators shall get the requisite nutritional information from respective Food Business Operators and provide on their website wherever applicable".** This information is to be displayed only for those FBO's falling under the criteria as specified under the above regulation. Hence, all E-commerce FBOs are hereby directed to enable provisions in their online platforms including mobile applications for display of nutritional information as well as other specific requirements under the above regulations, so that the FBOs registered on your respective platforms would be able to feed and update such information in respect of each dish/food they are offering for sale.

Food Safety and Standards (Vegan Foods) Regulations, 2022

On 10 June 2022, the Food Safety and Standards Authority of India ('FSSAI') notified Food Safety and Standards (Vegan Foods) Regulations, 2022 ('Vegan Foods Regulations') which came into force on 14 June 2022 and shall be applicable on all Vegan Foods. The Vegan Foods Regulations define Vegan Food as:

"the food or food ingredient, including additives, flavourings, enzymes and carriers, or processing aids that are not products of animal origin and in which, at no stage of production and processing, ingredients, including additives, flavourings, enzymes and carriers, or processing aids that are of animal origin has been used."

The main highlights of the aforesaid regulations are as follows:

- FBOs engaged in manufacturing, packing, selling, marketing, distributing or importing Vegan Food products should not involve animal testing for any purpose including safety evaluation, unless provided by any Regulatory Authority

- The regulations have laid down duty on the Food Business Operators ('FBOs') to ensure that all stages of production, processing and distribution are designed in such a way as to take the appropriate precautions in conformity with the Good Manufacturing Practices ('GMP') in order to avoid the unintended presence of non-vegan substances

- FBOs shall also comply with other requirements specified by the Food Authority to maintain the vegan integrity of the foods or food ingredients or products thereof from time to time.

- If the same production line is shared with non-vegan products or ingredients, thorough cleaning or comparable measures in conformity with Good Manufacturing Practices shall be carried out before production of vegan products commences and the same shall extend to all associated machinery, equipment, utensils and surfaces.

- The seller of vegan food, either exclusively or as part of retail merchandise, shall store and display such food in a manner which is easily distinguishable from non-vegan food.

- Every package of vegan foods, after the approval, shall carry the logo as specified below:

VEGAN

- All vegan food products being imported into India should carry a certificate issued by the recognised authorities of the exporting countries in the format as specified by the Authority in this behalf.

Updates under department of telecommunications dot

Waiver of Spectrum Usage Charges for Spectrum held by Telecom Service Provider

Department of Telecommunications vide its order dated 21st June, 2022 waived the Spectrum Usage Charges ('SUC') for the spectrum acquired through auctions held after 15 September, 2021 by Telecom Service Providers with immediate effect in different access spectrum bands such as :

600MHz, 700MHz, 800MHz, 900MHz, 1800MHz, 2100MHz, 2300MHz, 2500MHz, 3300MHz & 26 GHz bands.

Orders / Judgements

The Competition Commission of India ('CCI') has recently passed an order on 14 June 2022 approving acquisition of entire shareholding in Air Asia India by Air India. The approval has been granted at the time wherein Tata group is consolidating its airline business.

The proposed combination envisages the acquisition of the entire equity share capital of Air Asia (India) Private Limited ('Air Asia India') by Air India Ltd. ('AIL'), an indirect wholly owned subsidiary of Tata Sons Private Limited ('TSPL'). At present, TSPL holds 83.67% of the equity share capital of Air Asia India.

AIL, along with its wholly-owned subsidiary, Air India Express Limited ('AIXL'), is primarily engaged in the business of providing domestic scheduled air passenger transport service, international scheduled air passenger transport service, air cargo transport services in India, and charter flight services in India.

Air Asia India is a joint venture between TSPL and Air India Investment Limited ('AAIL') with TSPL presently holding 83.67% and AAIL holding 16.33% of the shareholding. Air Asia India operates under the brand name "Air Asia". It is engaged in the business of providing the following services domestic scheduled air passenger transport service, air cargo transport services, and charter flight services in India. Air Asia India does not provide scheduled air passenger transport services on international routes.

Compliance Calendar

Direct Tax

Due dates	Particulars
7th July 2022	Due date for deposit of Tax deducted for the month of June 2022.
	Due date for payment of Equalisation Levy on online advertisement and other specified services, referred to in Section 165 of Finance Act, 2016 for the month of June 2022.
	Payment of Equalisation Levy in case of e-commerce supply of services referred to in section 165A of Finance Act - For the quarter ending on 30th June 2022
15th July 2022	Due date for issue of TDS Certificate for tax deducted under section 194-IA in the month of May 2022.
	Due date for issue of TDS Certificate for tax deducted under section 194-IB in the month of May 2022.
	Due date for issue of TDS Certificate for tax deducted under section 194M in the month of May 2022.
	Quarterly statement of TCS deposited for the quarter ending 30 June 2022.
30th July 2022	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA in the month of June 2022.
	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IB in the month of June 2022.
	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194M in the month of June 2022.
	Quarterly TCS certificate in respect of tax collected by any person for the quarter ending June 30, 2022.
31st July 2022	Quarterly statements of TDS deposited for the quarter ending June 30, 2022.
	Due date for furnishing Form 67 for claiming foreign tax credit for FY 2021-22, where the assessee is required to file return by July 31, 2022.
	Due date for filing of Income Tax Return for FY 2021-22 in case of all Assessee other than following: - • Corporate Assessee; • Assessee whose books of account are liable for audit; • Partner of a firm whose books of account are liable for audit; • Assessee liable for furnishing report under section 92E of the Act.

Indirect Tax

Due dates	Particulars
Form GSTR-1	Details of outward supplies filed by registered person
GST Invoice furnishing facility	Optional facility to furnish the details of outward supplies under QRMP Scheme (Optional)
Form GSTR- 3B (Monthly Return)	Registered person having turnover more than INR 5 crores in the previous FY and registered person having turnover less than INR 5 crores and who have not opted for QRMP Scheme.
Form GSTR- 3B (Quarterly Return)	Registered person having turnover less than INR 5 crores in the previous FY and registered in prescribed 14 States/ UT*
Form GSTR- 3B (Quarterly Return)	Registered person having turnover less than INR 5 crores in the previous FY and registered in prescribed 22 States/ UT**
Form GST PMT-06 (Monthly payment of tax)	Payment of tax under QRMP Scheme
Form GSTR-6 (Return for Input Service Distributor)	Details of input tax credit received and distributed by input services distributor.
Form GSTR – 7 (Return for TDS Deductor)	For persons who are required to deduct TDS under GST.
Form GSTR – 8 (Return for TCS Collector)	For persons who are required to deduct TDS under GST.

Regulatory

Particulars	Applicant	Form No.	Due Dates
ECB Return	ECB Borrower	ECB-2	7th July
Annual return of Foreign Assets & Liabilities for FY.21-22	All Companies having Foreign Investment received or Foreign Investment made abroad	FLA return	15th July
Submit Statements of Investors Complaints to STX under R 13(3) of SEBI (LODR) Reg. 2015	Listed Companies	-	within 21 d days from the end of Quarter
Submit Audit Report to STX for Reconciliation of Share Capital Audit by PCA or PCS for shares held in Physical or D-mat mode under1996	Listed Companies	-	within 21 days from the end of Quarter
Submit Quarterly financial results (Unaudited+Limited Review Report/Audited) and Statement of Assets and Liabilities under R33(3)(a) of SEBI (LODR) Reg. 2015	Listed Companies	-	Within 45 days from the end of Quarter
Submission of Statement of deviation(s) or variation(s) under R32(1) of SEBI (LODR) Reg. 2015	Listed Companies	-	within 45 days from the end of Quarter
Submit a Statement showing Shareholding Pattern to STX under R31(1) of SEBI(LODR) Reg. 2015	Listed Companies	-	within 21 days from the end of Quarter
Submit a Corporate Governance Report under R27(2)(a) of SEBI (LODR) Reg. 2015	Listed Companies	-	within 15 days from the end of Quarter

NOIDA
(Delhi NCR - Corporate Office)
A-109, Sector - 136,
Noida - 201304, India
T: +91 120 5123000

DELHI
(Registered Office) B-27,
Soami Nagar, New Delhi -
110017, India
T: +91 0120 5123000

GURUGRAM
812-814, Tower B, Emaar Digital
Greens, Sector-61, Gurugram,
Haryana – 122102, India
T: +91 0124 430 1551

MUMBAI
11th Floor, B Wing, Peninsula Business
Park, Ganpatrao Kadam Marg, Lower
Parel, Mumbai - 400013, India
T: +91 22 61737000

CHENNAI
Prestige Palladium Bayan,
Level 5, 129-140, Greams Road,
Thousand Lights, Chennai - 600006
T: +91 44 46549201

BENGALURU
Prestige Obelisk, Level 4
No 3 Kasturba Road,
Bengaluru – 560 001, Karnataka, India
T: +91 80 2228 0999

PUNE
3rd Floor, Park Plaza, CTS 1085,
Ganeshkhind Road, Next to Pune
Central Mall, Shivajinagar,
Pune - 411005, India

DEHRADUN
1st Floor, "IDA" 46 E.C. Road,
Dehradun - 248001, Uttarakhand,
IndiaT: +91 135 271 6300

www.nangia-andersen.com | query@nangia-andersen.com